

SOON QUEK HOE & ANOR. v. REGINA.

[A. Cr. J. (Murray-Aynsley C.J.) May 4, 1954]

[Singapore — Magistrate's Appeal No. 26 of 1954]

Vagrancy Ordinance, 1939, s. 4(11) — "Suspected person" — Meaning of.

This was an appeal against the conviction of the appellants on a charge under s. 4(11) of the Vagrancy Ordinance. There was no evidence that the appellants were suspected persons on the facts which were the immediate cause of their arrests.

Held: the elements of "being a suspected person" and "loitering . . . with intent to commit an offence" under s. 4(11) of the Vagrancy Ordinance are distinct and the mere fact of loitering does not make the loiterer a suspected person.

Case referred to:—

- (1) *Ledwith v. Roberts* (1937) 1 K.B. 232.

MAGISTRATE'S APPEAL.

J. D. Donnelly for the appellants.

A. V. Winslow (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Murray-Aynsley, C.J.: — This was a charge under section 4 of Ordinance 37 of 1939 of "being a suspected person" loitering, etc. There are two elements in these cases: that of being a "suspected person" and "loitering etc." The two elements are distinct and the mere fact of loitering does not make the loiterer a suspected person; see *Ledwith v. Roberts*⁽¹⁾. Here there was nothing to make the appellants suspected persons other than the facts which were the immediate cause of the arrests.

*Appeal allowed.*Solicitors for the appellant: *Laycock & Ong.***Re KWAN WAH YIP & ANOR.**

[A. Cr. J. (Spenser Wilkinson, J.) May 14, 1954]

[Penang — Originating Motion No. 26 of 1954]

Criminal law and Procedure — Criminal Procedure Code (Cap. 21), s. 305 — Bail — Discretion of Court — Guidance to Subordinate Courts.

A stay of execution should not be granted unless there are special reasons for so doing, and the mere fact that a notice of appeal has been given is no sufficient reason.

The granting of bail pending appeal by the Lower Court being a matter of discretion a Magistrate may, apart from the accused's statement that he intends to appeal, find in the circumstances of the case before him reasons which would justify the granting of bail. The considerations which should guide the Subordinate Courts in granting or refusing bail pending appeal in cases where a term of imprisonment has been imposed are the

gravity or otherwise of the offence; the length of the term of imprisonment in comparison with the length of time which is likely to take for the appeal to be heard; whether there are difficult points of law involved; whether the accused is a first offender or has previous convictions; the possibility of his becoming again involved in similar or other offences whilst at liberty; and whether the security imposed will ensure the attendance of the appellant before the appellate Court.

Cases referred to:—

- (1) *Johore v. The King* (1907), 11 S.S.L.R. 36.
- (2) *Rex v. Lim Soh Chwee & Anor.* Braddell's C. G. H. 178.
- (3) *Doraisamy s/o Palanimuthu v. Public Prosecutor* (K. L. Criminal Application No. 2 of 1954 — unreported).
- (4) *Regina v. Ooi Ah Kow* (1952) M.L.J. 95.

APPLICATION for Bail.

Lee Thean Chu for the applicants.

J. D. Peterkin (Federal Counsel) for the Crown.

The facts and arguments appear sufficiently from the judgment below.

Spenser Wilkinson, J.: — This was an application for bail pending appeal on the part of two persons convicted in Magistrates Court Cases Nos. P. (Town-1) 75 and 76 of 1954. The applicants were sentenced to twelve months' imprisonment upon a charge under section 411 of the Penal Code and also to one month's imprisonment on a second charge under the Minor Offences Ordinance, the sentences to run concurrently. The learned President who was sitting as a Magistrate refused bail.

At the conclusion of the hearing I intimated that the application would be dismissed and that I would give my full reasons for this decision later, which I now do.

There is a conflict of authority on the subject of granting bail pending an appeal from the Lower Courts to the High Court. In 1907 Fisher J. in the case of *Johore v. The King*⁽¹⁾ held that the intention of the relevant section of the Criminal Procedure Code is that execution shall be stayed pending appeal on the finding of reasonable security and there is no arbitrary discretion in the Court to refuse it. In the course of his judgment in that case he said:—

"I feel it necessary to say that bail ought not to be refused in such a case, for if it is, a man who has been convicted on insufficient evidence or wrong grounds may be forced to undergo rigorous imprisonment for weeks before he can get his conviction quashed, a miscarriage of justice of a very grievous kind. . . . If an appeal is manifestly frivolous, or if security cannot be given which is reasonably sufficient to ensure that the accused will not run away, bail may rightly be refused — but not, I think, otherwise."